

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

CRIMINAL ACTION 3:00CR-49-H

UNITED STATES OF AMERICA

PLAINTIFF

V.

RODRIGO MACIAS and  
JESUS FERRER

DEFENDANTS

**JURY INSTRUCTIONS**

**Members of the Jury**, now that you have heard all the evidence and the arguments of the attorneys, it is my duty to give you instructions regarding the law that you must follow in deciding this case.

It is your duty to decide whether the United States has proved beyond a reasonable doubt the specific facts necessary to find the defendants guilty of the crimes charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy, prejudice, or bias for or against the defendants or the United States. Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth from the evidence presented and to apply that truth to the legal instructions I shall give you.

You must follow the law as I explain it to you whether you agree with the law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The indictment or formal charge against the defendants is not evidence of guilt. The defendants are presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all. The United States has the burden of proving each defendant guilty beyond a reasonable doubt, and if it fails to do so you must find the defendant not guilty.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a real doubt based on reason and common sense after careful and impartial consideration of all the evidence in the case. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt, therefore, is proof that is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the United States has proved each defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

As I explained previously, you must decide what the facts are from the evidence that you saw and heard here in court. You may consider only the evidence that I have admitted in this case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding

upon you.

In considering the evidence you may draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which reason and common sense lead you to make.

You may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walks into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it is raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

In saying that you must consider all the evidence, I do not mean that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness.

In deciding whether you believe or do not believe any witness I suggest that you ask yourself a few questions: Did the person impress you as one who was telling the truth? Did he or she have any particular reason not to tell the truth? Did he or she have a personal interest in

the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did he or she appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

A defendant has an absolute right not to testify. A defendant need not prove anything. Therefore, the fact that a defendant did not testify or did not call any witnesses cannot be considered by you in any way during your deliberations.

Do not make any decisions based only on the number of witnesses who testified. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Remember, witnesses are not the property of either defendant or the United States; they merely give testimony which you should consider. Concentrate on that, not the numbers.

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

Also, do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case.

In this case, the indictment charges three separate offenses, called "counts," against two separate defendants. The number of charges is not evidence of guilt, and this should not influence your decision in any way. The defendants are on trial only for the particular crimes

charged in the indictment. It is your duty to consider separately the evidence that relates to each charge and each defendant, and to return a separate verdict for each charge and each defendant. For each charge, you must decide as to each defendant separately whether the government has presented proof beyond a reasonable doubt that the defendant is guilty. Your decision on one charge or on one defendant, whether it is guilty or not guilty, should not influence your decision on any of the other charges or the other defendant.

## COUNT I

Count I of the indictment accuses the defendants Rodrigo Macias and Jesus Ferrer of conspiracy to commit the crime of possession with intent to distribute 500 grams or more of cocaine in violation of federal law. It is a crime for two or more persons to conspire, or agree, to commit a criminal act, even if they never actually achieve their goal.

A conspiracy is a kind of criminal partnership. For you to find a defendant guilty of the conspiracy charge, the government must prove each and every one of the following elements beyond a reasonable doubt:

- *First*, that two or more persons conspired, or agreed, to commit the crime of possession with the intent to distribute the cocaine which was found at the Red Roof Inn;
- *Second*, that the defendant knowingly and voluntarily joined the conspiracy; and
- *Third*, that the defendant participated in the conspiracy.

With regard to the first element – a criminal agreement – the government must prove that two or more persons conspired, or agreed, to cooperate with each other to commit the crime of possession with intent to distribute the cocaine which was found at the Red Roof Inn.

The crime of possession with intent to distribute cocaine itself has two elements: a) that the defendant knowingly and intentionally possessed cocaine, and b) that the defendant possessed the substance with the intent to distribute it. To “possess with intent to distribute” simply means to possess with intent to deliver or transfer possession of a controlled substance to another person, with or without any financial interest in the transaction.

A criminal agreement does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that

people simply met from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit the crime of possession with intent to distribute the cocaine found at the Red Roof Inn. This is essential.

An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement existed. But it is up to the government to convince you that such facts and circumstances existed in this particular case. A buyer/seller relationship alone is not enough to establish participation in the conspiracy. The defendant is accused of conspiring to commit federal crimes. The government does not have to prove that the defendant agreed to commit all of these crimes. But, the government must prove an agreement to commit at least one of them for you to return a guilty verdict on the conspiracy charge.

If you are convinced that there was a criminal agreement, then you must decide the second element, and determine whether the government has proved that the defendant knowingly and voluntarily joined that agreement. You must consider each defendant separately in this regard. To convict any defendant, the government must prove that he knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals.

To prove participation in a conspiracy, the government must prove that a defendant took some step beyond mere association with, approval of, or presence at a conspiracy. You may not find that a defendant is a member in a conspiracy merely because of friendship or family

relationship or association, or business association with alleged coconspirators.

This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning, nor does it require proof that a defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough if there is sufficient evidence to establish that connection beyond a reasonable doubt.

But proof that a defendant simply knew about a conspiracy, or was present at the time, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough.

What the government must prove is that a defendant knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals. This is essential.

A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

If you are convinced that the government has proved these elements, say so by returning a guilty verdict on this count. If you have a reasonable doubt about any of these elements, then you must find the defendant not guilty.

If you do find the defendant guilty of the crime of conspiracy to possess with intent to



distribute cocaine, then you must also determine the amount beyond a reasonable doubt. You shall consider the following options to the extent you find them proved beyond a reasonable doubt:

- 1) 500 grams or more of a mixture or substance containing a detectable amount of cocaine;
- 2) At least 50 grams but less than 500 grams of a mixture or substance containing a detectable amount of cocaine; or
- 3) Less than 50 grams of a mixture or substance containing a detectable amount of cocaine.

Once you have determined the amount, say so by indicating it in the appropriate space on the verdict form.

## COUNT II

Count II of the indictment accuses the defendants Rodrigo Macias and Jesus Ferrer of aiding and abetting each other and others unknown to knowingly and intentionally possess with intent to distribute 500 grams or more of cocaine, in violation of federal law.

For you to find the defendant guilty of this crime, it is not necessary for you to find that he personally committed the crime himself. You may also find him guilty if he intentionally helped or encouraged someone else to commit the crime. A person who does this is called an aider and abettor.

But for you to find the defendant guilty as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

- *First*, that the defendant committed the crime of attempting to possess with intent to distribute the cocaine which was found at the Red Roof Inn.
- *Second*, that the defendant helped to commit the crime or encouraged someone else to commit the crime; and
- *Third*, that the defendant intended to help commit or encourage the crime.

On page six of these instructions I have already set out the elements of the crime of possession with intent to distribute cocaine. Please use that definition when considering Count II as well.

Proof that the defendant may have known about the crime, or even that he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more

it is not enough.

What the government must prove is that the defendant did something to help or encourage the crime with the intent that the crime be committed.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this count. If you have a reasonable doubt about any of these elements, then you must find the defendant not guilty.

If you do find the defendant guilty of the crime of aiding and abetting others to possess with intent to distribute cocaine, then you must also determine the amount beyond a reasonable doubt. You shall consider the following options to the extent you find them proved beyond a reasonable doubt:

- 1) 500 grams or more of a mixture or substance containing a detectable amount of cocaine;
- 2) At least 50 grams but less than 500 grams of a mixture or substance containing a detectable amount of cocaine; or
- 3) Less than 50 grams of a mixture or substance containing a detectable amount of cocaine.

Once you have determined the amount, say so by indicating it in the appropriate space on the verdict form.

### COUNT III

Count III of the indictment accuses the defendant Jesus Ferrer of attempting to commit the crime of possession with intent to distribute cocaine, in violation of federal law.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved both of the elements beyond a reasonable doubt:

- *First*, that the defendant intended to possess the cocaine found at the Red Roof Inn with intent to distribute it; and
- *Second*, that the defendant did some overt act that was a substantial step towards possessing the cocaine found at the Red Roof Inn.

Once again, you should refer to the elements of the crime of possession with intent to distribute which are set out on page six of these instructions.

Merely preparing to commit a crime is not a substantial step. The defendant's conduct must go beyond mere preparation, and must strongly confirm that the defendant intended to possess the controlled substance with the intent to distribute it. But the government does not have to prove that the defendant did everything except the last act necessary to commit the crime. A substantial step beyond mere preparation is enough.

If you are convinced that the government has proved these elements, say so by returning a guilty verdict on this count. If you have a reasonable doubt about any of these elements, then you must find the defendant not guilty. Enter your decision on the verdict form.

You must enter a separate verdict as to each defendant on each separate count. Should you enter a Guilty verdict as to a defendant on Counts I or II, then you must enter a verdict as to the amount as to that defendant on the count. Should you enter a Not Guilty verdict as to a defendant on Counts I or II, then you need not consider the amount.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

To find the defendant guilty, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt.

To find him not guilty, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. It is your duty as jurors to consult with one another, and to deliberate with a view toward reaching agreement, if you can do so without violence to individual judgment. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say.

You must decide the case for yourself, but only after an impartial consideration of the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember, you are the judges of the facts. Your only interest is to seek the truth from

the evidence in the case.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

If you decide that the government has proved the defendant guilty, then it will be my job to decide what the appropriate punishment should be. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict. Your job is to look at the evidence and decide if the government has proved the defendant guilty beyond a reasonable doubt.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

A Verdict Form has been prepared for your convenience. You will take this form to the jury room and, if and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date, and sign the forms which set forth the verdict with respect to each count in the case. You will then return with your verdict to the courtroom.

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**VERDICT FORM**

I.

We, the jury, find the defendant, **Rodrigo Macias**, as to:

Count I      GUILTY \_\_\_\_\_                      NOT GUILTY \_\_\_\_\_

If you enter a Guilty verdict here, you must consider subpart A.

A.

As to Count I, we, the jury find the defendant, **Rodrigo Macias**, conspired to possess  
with intent to distribute the following amount of cocaine:

1) 500 grams or more of a mixture or substance containing a detectable amount of  
cocaine \_\_\_\_\_

2) At least 50 grams but less than 500 grams of a mixture or substance containing a  
detectable amount of cocaine \_\_\_\_\_

3) Less than 50 grams of a mixture or substance containing a detectable amount of  
cocaine \_\_\_\_\_

II.

We, the jury, find the defendant, **Rodrigo Macias**, as to:

Count II      GUILTY \_\_\_\_\_                      NOT GUILTY \_\_\_\_\_

If you enter a Guilty verdict here, you must consider subpart B.

B.

As to Count II, we, the jury find the defendant, **Rodrigo Macias**, aided and abetted others to possess with intent to distribute the following amount of cocaine:

1) 500 grams or more of a mixture or substance containing a detectable amount of cocaine \_\_\_\_\_

2) At least 50 grams but less than 500 grams of a mixture or substance containing a detectable amount of cocaine \_\_\_\_\_

3) Less than 50 grams of a mixture or substance containing a detectable amount of cocaine \_\_\_\_\_

III.

We, the jury, find the defendant, **Jesus Ferrer**, as to:

Count I      GUILTY \_\_\_\_\_                      NOT GUILTY \_\_\_\_\_

If you enter a Guilty verdict here, you must consider subpart C.

C.

As to Count I, we, the jury find the defendant, **Jesus Ferrer**, conspired to possess with



intent to distribute the following amount of cocaine:

- 1) 500 grams or more of a mixture or substance containing a detectable amount of cocaine \_\_\_\_\_
- 2) At least 50 grams but less than 500 grams of a mixture or substance containing a detectable amount of cocaine \_\_\_\_\_
- 3) Less than 50 grams of a mixture or substance containing a detectable amount of cocaine \_\_\_\_\_

IV.

We, the jury, find the defendant, **Jesus Ferrer**, as to:

Count II      GUILTY \_\_\_\_\_                      NOT GUILTY \_\_\_\_\_

If you enter a Guilty verdict here, you must consider subpart D.

D.

As to Count II, we, the jury find the defendant, **Jesus Ferrer**, aided and abetted others to possess with intent to distribute the following amount of cocaine:

- 1) 500 grams or more of a mixture or substance containing a detectable amount of cocaine \_\_\_\_\_
- 2) At least 50 grams but less than 500 grams of a mixture or substance containing a detectable amount of cocaine \_\_\_\_\_
- 3) Less than 50 grams of a mixture or substance containing a detectable amount of cocaine \_\_\_\_\_

V.

We, the jury, find the defendant, **Jesus Ferrer**, as to:

Count III      GUILTY \_\_\_\_\_                      NOT GUILTY \_\_\_\_\_

\_\_\_\_\_  
FOREPERSON

Date: \_\_\_\_\_